

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JUDITH FOX

(b) County of Residence of First Listed Plaintiff **MONROE**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Salvatore P.J. Vito, Esquire; (570) 424-8890;
45 North 7th Street, Stroudsburg, PA 18360

DEFENDANTS

ALDI, INC.; ALDI INTERNATIONAL; ALDI

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:
Premises liability; Negligence/Gross Negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ **In excess of \$75,000** CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/18/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

LAW OFFICE OF SALVATORE P.J. VITO, P.C.

Salvatore P.J. Vito, Esquire

Attorney I.D. No. 35963

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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JUDITH FOX,

Plaintiff,

v.

ALDI, INC., and/or ALDI and/or
ALDI INTERNATIONAL;

Defendant.

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No.

COMPLAINT

AND NOW COMES Plaintiff, by and through counsel, and files the following
COMPLAINT and in support thereof avers the following:

1. Allegation of jurisdiction founded on diversity of citizenship and amount: Plaintiff is a citizen of the Commonwealth of Pennsylvania, and Defendant exists under the laws of the State of Illinois and has a principal place of business in Illinois. No Defendant exists under the laws of the Commonwealth of Pennsylvania or maintains a principal place of business in the Commonwealth of Pennsylvania. The matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. §1332.
2. Plaintiff is a competent adult with address of 55 Garden Street, Stroudsburg, Pennsylvania 18360.
3. Defendant is an Illinois business corporation with its principal place of business located at 1200 North Kirk Road, Batavia, Illinois 60510.

4. On or about June 5, 2018, Plaintiff was shopping at the ALDI store located at 700 North Ninth Street, Stroudsburg, Pennsylvania 18360, at which time she was struck, while shopping, by a forklift recklessly operated by an employee and/or agent of Defendant, causing Plaintiff to be struck, fall and sustain serious injuries.

COUNT I – NEGLIGENCE / GROSS NEGLIGENCE

5. On June 5, 2018, it is believed and therefore averred that Defendant was the owner of and/or in possession of and/or in control of the aforesaid premises.

6. Defendant created a dangerous condition on its premises, to wit, creating and/or permitting the improper and dangerous operation of a forklift while absolutely no safety measures were employed such as a proper training and/or supervision, a spotter, signage, a cordoned-off area, audible alarms of presence of vehicle, or any other measure that would have been reasonable under the circumstances, and in violation of acceptable and/or established standards in the industry. Moreover, due to the lack of proper safety measures or warnings, Defendant, by and through its agent and/or employee, recklessly struck the side of Plaintiff's body while she was looking at items on the shelf of Defendant's store.

7. Defendant knew or should have known of the aforesaid dangerous condition and had notice of said dangerous condition, or by reasonable investigation would have discovered the same.

8. As a direct and proximate result of the aforementioned defective and dangerous condition, Plaintiff was struck blindly by a moving forklift and caused to fall and sustain serious injury.

9. At all times material hereto, Plaintiff acted in a careful, cautious, reasonable and prudent manner and was free of any comparative or contributory negligence.

10. At all times material hereto, Plaintiff was free from any comparative negligence and did not in any manner assume the risk of injury or accident.

11. The aforementioned incident resulted in injuries and/or damages which were due in no part whatsoever to any act, or failure to act, on the part of Plaintiff.

12. The benefit of providing safety measures to warn of and prevent such an occurrence greatly outweighed the minimal cost of same.

13. The aforementioned incident and the resulting injuries and damages sustained by Plaintiff directly and proximately resulted from the negligence, carelessness and/or recklessness of Defendant, which conduct consisted of, but was not limited to, the following:

- a) Defendant created and/or permitted a dangerous condition on its premises;
- b) Defendant allowed the aforesaid dangerous condition where Defendants knew or should have known of same; and
- c) Defendant failed to inspect, maintain and/or correct or prevent the dangerous condition in a reasonable and prudent manner.

14. Defendant's negligence, carelessness and/or recklessness also consisted of, but was not limited to, the following:

- a) Defendant hired, employed and promoted various agents, servants, workers and/or employees who had the responsibility or obligation to properly perform work and to properly inspect, maintain, correct and keep safe the subject premises;
- b) Defendant failed to establish procedures and programs to determine whether employees and/or potential employees were and are fit and capable of properly performing the requirements of their respective employment;
- c) Defendant was negligent, careless and/or reckless under the circumstances in the

hiring, employing, training and/or promoting the various agents, servants, workers and/or employees who were responsible for work on the subject property; and

d) Defendant failed to properly supervise its agents, servants, workers and/or employees.

15. As a direct and proximate result of the aforementioned incident, Plaintiff suffered severe and serious injuries including, but not limited to, serious injury to her head, brain and/or nervous system, said injuries causing pain and headaches, loss of balance, concussion/post-concussive syndrome, further injuries yet to be determined, and other medical problems to such extent that Plaintiff is incapable of returning to work, operating a motor vehicle, or enjoying daily life in general, all of which injuries are and/or may be permanent in nature and/or will progressively worsen.

16. Based on the injuries listed above, Plaintiff has suffered damages including, but not limited to:

- a) Pain and suffering;
- b) Loss of enjoyment of life;
- c) Emotional distress;
- d) Diminished earning capacity and lost wages;
- e) Medical expenses related to the continued medical care, physical therapy and medication required to treat the aforementioned injuries, which may occur well into the future.

17. Furthermore, the reckless indifference of Defendant in this matter justifies an award of punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount in excess of Seventy-Five Thousand (\$75,000.00) dollars, plus PUNITIVE DAMAGES, interest and costs, and such other and further relief that the Court deems necessary and just.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

LAW OFFICE OF SALVATORE P.J. VITO, P.C.

/s/ SALVATORE P.J. VITO, ESQUIRE

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